

REMARKS

This Application has been carefully reviewed in light of the Office Action dated April 18, 2008 (“*Office Action*”). In the *Office Action*, Claims 1-39 are pending. The Examiner rejects Claims 1-13, 15-21, and 23-39; and objects to Claims 14 and 22. Applicants respectfully request reconsideration and favorable action in this case.

Allowable Subject Matter

Applicants note with appreciation the Examiner's indication that Claims 14 and 22 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. However, as discussed below, Applicants believe that independent Claim 11 (from which Claim 14 depends) and independent Claim 16 (from which Claim 22 depends) are also allowable. Therefore, Applicants have not rewritten Claims 14 and 22 in independent form.

Section 103 Rejections

The Examiner rejects Claims 1-13, 15-21, and 23-39 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U.S. Patent Application Publication No. 2003/0061319 issued to Manzardo (“*Manzardo*”), U.S. Patent No. 7,085,805 issued to Ruberg et al. (“*Ruberg*”), U.S. Patent No. 6,853,714 issued to Liljestrand et al. (“*Liljestrand*”), U.S. Patent No. 6,785,223 issued to Korpi et al. (“*Korpi*”), and U.S. Patent No. 7,023,876 issued to Berry et al. (“*Berry*”).

A. The Claims are Allowable over the cited References

Because the proposed combinations do not disclose, teach, or suggest the features of Applicants' claims, Applicants respectfully traverse the rejection of the claims and request reconsideration and favorable action.

1. Claims 1-2, 4, 16-18, 21, 23, 32, 33, and 35

In the *Office Action*, the Examiner rejects Claims 1-2, 4, 16-18, 21, 23, 32, 33, and 35 over the *Manzardo-Ruberg* combination and Claims 3, 5, 25, and 34 over the proposed *Manzardo-Ruberg-Liljestrand* combination. It is Applicants' position, however, that the cited

references do not disclose the particular combination of features and operations recited in Applicants' claims.

For example, the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest "determining that the interruption in keep alive signals **resulted from failure of the first user endpoint and not as a result of voluntary disconnection**," as recited in amended Claim 1. In the *Office Action*, the Examiner acknowledges that the recited features and operations are not disclosed in *Manzardo*. (*Office Action*, page 3). Rather, the Examiner relies on the disclosure of *Ruberg* and, specifically, on the column 15, lines 33-34 of *Ruberg*, for disclosure of these claim elements. Applicants respectfully disagree and submit that *Ruberg* does not cure the acknowledged deficiencies of *Manzardo*.

Ruberg discloses that "a heart beat message may be sent in both directions between the peer device managers and in both directions between each device manager and their respective desktop units." (*Ruberg*, Column 15, lines 18-21). According to *Ruberg*, "[a]fter a predetermined number of heartbeat time periods have expired without hearing anything, functionality of the remote unit may be assumed to be non-functional and the connections between the local and the remote units may be closed." (*Ruberg*, Column 15, lines 25-29, emphasis added). Thus, *Ruberg* discloses that the connections are closed regardless of whether the interruption is a result of failure or voluntary disconnection. There is no determination as to the reason of the failure in heartbeats. As identified by the Examiner, *Ruberg* discloses that "[i]n one embodiment where a desktop unit fails (e.g., powered off, disconnected), the device data may be removed from the local device list and all peers and all interested device services may be notified that the devices for that desktop unit are no longer available." (*Ruberg*, Column 15, lines 32-37). Again, this section of *Ruberg* does not distinguish between different types of disconnection. The cited section of *Ruberg* only indicates that when a desktop unit is powered off or disconnected, for whatever reason, the device is removed from a device list. Thus, any lack of a heartbeat is deemed a failure and the failover procedure is initiated. There is no disclosure in *Nguyen* of distinguishing between a failure and a voluntary disconnection by a user of the first endpoint. There is no disclosure in *Ruberg* of "determining that the interruption in keep alive signals resulted from failure of the first user endpoint and not as a result of voluntary disconnection," as recited in amended Claim 1.

For at least these reasons¹, Applicants respectfully request reconsideration and allowance of Claim 1, together with Claims 2-5 that depend from Claim 1.

Independent Claims 16 and 32 includes certain features and operations that are analogous to the features and operations recited in Claim 1. For example, Claim 16 recites “a processor operable to . . . determine that the interruption in keep alive signals resulted from failure of the first user endpoint and not as a result of a voluntary disconnection by a user of the first endpoint.” Claim 32 recites “determining that the interruption in keep alive signals resulted from failure of the first user endpoint and not as a result of a voluntary disconnection by a user of the first endpoint.” Accordingly, for reasons analogous to those discussed above with regard to Claim 1, Applicants submit that the proposed *Manzardo-Ruberg-Nguyen* combination does not disclose, teach, or suggest the features of independent Claims 16 and 32. For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 16 and 32, together with Claims 17-18, 21, 23, and 25 that depend on Claim 16 and Claims 32, 33, and 35 that depend on Claim 32.

2. **Claim 7**

In the *Office Action*, the Examiner continues to reject Claim 7 over the *Manzardo-Ruberg* combination. It is Applicants’ position, however, that the proposed *Manzardo-Ruberg* combination does not disclose the particular combination of features and operations recited in Applicants’ claim.

For example, it continues to be Applicants’ position that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest at least the following combination of claim elements recited in Claim 7:

¹ Additionally, it continues to be Applicants’ position that the proposed combination does not disclose, teach, or suggest Applicants’ steps of “maintaining a connection with the second user endpoint after the interruption” and “reestablishing the communication session between the first user endpoint and the second user endpoint if the keep alive signals resume within a predetermined time period,” as recited in Claim 1. In a Response to Office Action submitted on March 9, 2007, Applicants identified, as examples, several claim elements that were not disclosed in the proposed *Manzardo-Ruberg* combination. Although Applicants believe that those previous arguments continue to have merit, to avoid burdening the record, Applicants do not repeat those arguments here. Rather, Applicants refer the Examiner to pages 11-14 of the previous Response to Office Action for a detailed discussion of the failure of the proposed *Manzardo-Ruberg* combination to disclose, teach, or suggest the recited features and operations.

- determining the user associated with the first user endpoint using the directory,
- determining that the third user endpoint is also associated with the user,
- selecting the third user endpoint for the communication session, and
- transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint.

In the Office Action, the Examiner again relies upon page 8, paragraph 82 of *Manzardo* for disclosure of Applicants' recited claim language. However, that portion of *Manzardo* merely discloses that the main server "may include or store information regarding connections, gateways, interfaces, other client connection devices, calls, addresses, user devices, configuration details, content, requests, connections, communications, etc." (*Manzardo*, Page 8, paragraph 82). There is no disclosure in *Manzardo* that such information is used to perform steps analogous to Applicants' above-recited steps.

In fact, *Manzardo* merely discloses that the stand-by server 104 may initiate a switch over from the main server 102 to the stand-by server 104 if the stand-by server 104 fails to receive one or more of the keep alive signals. (*Manzardo*, Page 5, paragraph 49). Thus, *Manzardo* relates to the switch-over between two servers that support a call between two endpoints. Since *Manzardo* does not relate to the failure of endpoints but rather to the failure of a server, there would be no need (and *Manzardo* discloses no such need) for performing steps of "determining the user associated with the first user endpoint using the directory," "determining that the third user endpoint is also associated with the user," "selecting the third user endpoint for the communication session," and "transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint," as recited in Applicants' Claim 7. The claimed operations are simply absent from the disclosure of *Manzardo*.

Likewise, *Ruberg* also "relates to methods and apparatus for data distribution among servers in a grouped server system where device operations remain uninterrupted when a server fails." (*Ruberg*, Column 2, lines 18-20). Thus, even to the extent that *Ruberg* discloses a "desktop unit" that may or may not be analogous to Applicants' recited "user endpoint," *Ruberg* also does not relate to the failure of such a desktop unit. Accordingly, the system of *Ruberg*

would have no need (and *Ruberg* discloses no such need) for performing steps of “determining the user associated with the first user endpoint using the directory,” “determining that the third user endpoint is also associated with the user,” “selecting the third user endpoint for the communication session,” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint,” as recited in Applicants’ Claim 7.

Since neither *Manzardo* nor *Ruberg* relate to the failure of endpoints but instead each relate to the failure of a server, even the combination of these references cannot be said to disclose Applicants’ above recited operations. Again, Applicants respectfully submit that such a piecemeal rejection of Applicants’ claim fails to give credence to the overall combination of features recited in the Claim 7. The M.P.E.P. provides that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)). Applicants’ claim does not merely recite transferring a communication session in the abstract. Additionally, Applicants’ claim does not recite “a user endpoint” in the abstract. Rather, upon detecting a failure of an endpoint, Applicants’ Claim 7 clearly recites **“determining that the third user endpoint is also associated with the user,” “selecting the third user endpoint for the communication session,” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint.”** This combination of elements is clearly absent from the *Manzardo-Ruberg* combination.

For at least these reasons, Applicants request reconsideration and allowance of Claim 7.

3. **Claims 6, 8-10, 26-31, and 36- 39**

In the *Office Action*, the Examiner rejects Claims 6, 8, 26, 28-29, 31, 37, and 39 over the proposed *Manzardo-Ruberg* combination. The Examiner rejects Claims 9-10, 27, 30, and 38 over the proposed *Manzardo-Ruberg-Korpi* combination. It continues to be Applicants’ position, however, that the cited references do not disclose the particular combination of features and operations recited in Applicants’ claims.

For example, the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest “identifying a third user endpoint as being associated with the first user” and

“transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint,” as recited in Claim 6. In the *Office Action*, the Examiner points to reference numerals 112, 114, and 116 of Figure 1 and identifies paragraph 53 as disclosing the recited claim elements. (*Office Action*, page 5). Applicants respectfully disagree, however, that the cited portions of *Manzardo* disclose Applicants’ “identifying” and “transferring” steps. Although *Manzardo* does indeed state that “during a step 212, the stand-by server 104 established connections with the gateway 120 and/or the interface 117” (*Manzardo*, Page 5, paragraph 54), the disclosed step only indicates that connections are established. When read in the context of the entire process disclosed in *Manzardo*, it becomes clear that the establishing of a connection with gateway 120 and/or the interface 117 at step 212 is merely the re-establishment of a previous connection with that particular gateway 120 and/or interface 117.

Specifically, *Manzardo* discloses that at a step 202, “gateway 120 and/or the interface 117 or some other client connection device may establish one or more connections with the main server 102 when supporting one or more call(s) . . .” (*Manzardo*, Pages 4-5, paragraph 44). The purpose of *Manzardo*, however, is to initiate a switch over from the main server 102 to the stand-by server 104 if the stand-by server 104 fails to receive one or more of the keep alive signals. (*Manzardo*, Page 5, paragraph 49). Accordingly, *Manzardo* discloses:

During a step 206, the main server 102 stops initiating or sending keep alive signals . . . During a step 208, the stand-by server 104 detects a lack or loss of one or more keep alive signals initiated by the main server 102 . . . During a step 210, the gateway 120 and/or the interface 117 drop their connection(s) with the main server 102. Presumably, whatever problem happened with the main server 102 to stop it from sending keep alive signals to the stand-by server 104 will also result in a loss of the keep alive signal, if any, or other control, data or other signals being sent from the main server 102 to the gateway 120 and/or the interface . . .

During a step 212, the stand-by server 104 establishes connections with the gateway 120 and/or the interface 117.

(*Manzardo*, Page 5, paragraphs 50-53). Thus, upon a failure of the main server, *Manzardo* discloses that any connections between that main server and the gateway 120 and/or interface 117 are dropped. Those same connections are then reestablished between the stand-by server and the same gateway 120 and/or interface 117. The reestablishment of connections with the gateway 120 and/or the interface 117 are not analogous to “identifying a third user endpoint as

being associated with the first user” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint” as recited in Claim 6.

Furthermore, Applicants note and wish to comment on the Examiner’s identification of reference numerals 112, 114, and 116 in Figure 1 of *Manzardo*. While the identified reference numerals do indeed relate to a “one or more telephones 112, 114 or other client devices 116 connected to the network 206 via an interface 117” (*Manzardo*, Figure 1; Page 3, paragraph 29), the disclosed components do not alter the operations disclosed in *Manzardo*. Specifically, and as described in detail above, *Manzardo* discloses that upon a failure of the main server any connections between that main server and the gateway 120 and/or interface 117 are dropped. Those same connections are then reestablished between the stand-by server and the same gateway 120 and/or interface 117. Thus, *Manzardo* discloses switching from a failed server to a stand-by server. Although such servers may support “one or more telephones 112, 114 or other client devices 116,” the switching of servers is certainly not analogous to “identifying a third user endpoint as being associated with the first user” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint” as recited in Claim 6.

Likewise, *Ruberg* also “relates to methods and apparatus for data distribution among servers in a grouped server system where device operations remain uninterrupted when a server fails.” (*Ruberg*, Column 2, lines 18-20). Thus, even to the extent that *Ruberg* discloses a “desktop unit” that may or may not be analogous to Applicants’ recited “user endpoint” (which Applicants do not admit), *Ruberg* does not relate to the failure of such a desktop unit. Like the system of *Manzardo*, the system of *Ruberg* would have no need (and *Ruberg* discloses no such need) for performing the steps of “identifying a third user endpoint as being associated with the first user” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint,” as recited in Claim 6.

Since neither *Manzardo* nor *Ruberg* relate to the failure of endpoints but instead each relate to the failure of servers, the combination of these references cannot be said to disclose “identifying a third user endpoint as being associated with the first user” and “transferring the

communication session with the second user endpoint from the first user endpoint to a third user endpoint,” as recited in Claim 6. Again, Applicants respectfully submit that such a piecemeal rejection of Applicants’ claim fails to give credence to the overall combination of features recited in the Claim 6. The M.P.E.P. provides that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)). Applicants’ claim does not merely recite transferring a communication session in the abstract. Additionally, Applicants’ claim does not recite “a user endpoint” in the abstract. Rather, upon detecting a **failure of an endpoint**, Applicants’ Claim 6 clearly recites “identifying a third user endpoint as being associated with the first user” and “transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint.” This combination of elements is clearly absent from the *Manzardo-Ruberg* combination.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 6, together with Claim 8-10 that depend on Claim 6.

Independent Claims 26 and 39 include certain features and operations that are analogous to the features and operations recited in Claim 1. For example, Claim 26 recites “a processor operable to . . . identify a third user endpoint as being associated with the first user; and . . . transfer the communication session with the second user endpoint to the third user endpoint.” As another example, Claim 36 recites “identifying a third user endpoint as being associated with the first user” and “transferring the communication session with the second user endpoint from the first user endpoint to the third user endpoint.” As still another example, Claim 39 recites “means for identifying a third user endpoint as being associated with the first user” and “means for transferring the communication session with the second user endpoint to a third user endpoint.” Accordingly, for reasons analogous to those discussed above with regard to Claim 6, Applicants submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest the features of independent Claims 26, 36, and 39.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 26, 36, and 39, together with the Claims 27-31 that depend from Claim 26 and Claims 37-38 that depend from Claims 36.

4. Claims 11-13 and 15

In the *Office Action*, the Examiner continues to reject Claims 11-13 and 15 over the proposed *Manzardo-Berry* combination. It continues to be Applicants' position, however, that the proposed *Manzardo-Berry* combination does not disclose the particular combination of features and operations recited in Applicants' claims.

For example, the proposed *Manzardo-Berry* combination does not disclose, teach, or suggest the steps of "receiving from a user of the first user endpoint a user-generated message to reestablish the communication session" and "in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint," as recited in Applicants' Claim 11. In the *Office Action*, the Examiner again acknowledges that the recited features and operations are absent from *Manzardo* and continues to rely upon *Berry*. (*Office Action*, page 20). Specifically, the Examiner relies on Column 13, lines 53-54 of *Berry* as disclosing Applicants' step of "receiving" and on Column 9, lines 35-39 of *Berry* as disclosing Applicants' step of "reestablishing." As previously shown by Applicants, however, the portions of *Berry* cited by the Examiner in the *Office Action* indicate that it is the state machine 204 of the *Berry* system - and not an user endpoint - that initiates the messages.

Specifically, *Berry* discloses that "the state machine 401 provides a set response mode message to the protocol layer 103 that causes the protocol layers 102 and 103 to begin the initialization process and re-negotiate the exchange rate and re-establish the connection." (Column 9, lines 35-39, emphasis added). *Berry* further discloses that "state machine 401 provides a synchronization request message to re-establish the connection and/or renegotiate the exchange rate." (Column 13, lines 51-53, emphasis added). Thus, the relied upon portions of *Berry* merely disclose that a state machine 401 initiates various messages during the negotiation of an exchange rate and the (re)establishment of a connection. (Abstract). Because *Berry* discloses that the state machine initiates the messages, Applicants maintain that there is no disclosure in the cited portions of *Berry* of "a user-generated message," as recited in Claim 11. Since *Berry* does not disclose a user-generated message, *Berry* cannot possibly disclose, teach, or suggest "receiving from a user of the first user endpoint a user-generated message to reestablish the communication session," as recited in Claim 11. For analogous reasons,

Berry also does not disclose, teach, or suggest “in response to the user-generated message, reestablishing the communication session between the second endpoint and the user of the first endpoint,” as also recited in Claim 11.

In previous communications, the Examiner has answered Applicants’ arguments by directing Applicants to Column 5, lines 51-55 of *Berry*. (*Office Action*, page 20). That portion of *Berry* mere discloses, however:

The devices, 100 and 101, could be any devices where point-to-point digital communication exchange is desired. Some examples of the devices, 100 and 101, include without limitation, tape drives, hard drives, tape library systems, notebook computers, desktop computers, and workstations.

(*Berry*, Column 5, lines 51-55). Thus, *Berry* merely describes the types of devices that may communicate by way of the point-to-point protocol of *Berry*. However, it continues to be Applicants’ position that the cited portion does not disclose Applicants’ recited claim elements. Although *Berry* discloses that the devices may include workstations or other user-devices, there is no disclosure that the user-devices are used to send user-generated messages during the negotiation of the exchange rate.

Contrary to the Examiner’s previous assertions, *Berry* does not inherently teach a user generated message and “receiving from a user of the first user endpoint a user-generated message to reestablish the communication session,” as recited in Claim 11.” The M.P.E.P. provides guidance with regard to when a characteristic is inherently disclosed in a prior art reference. Specifically, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” MPEP § 2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993) (*emphasis original*). Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. MPEP § 2112 (citing *Ex Parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. and Inter. 1990) (*emphasis original*).

In the instant case, there is no indication in *Berry* that the allegedly inherent characteristics (i.e., receiving from a user of the first user endpoint a user-generated message to reestablish the communication session and in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint) necessarily flows from the teachings of *Berry*. Although devices 100 and 101 are described as using the point-to-point protocol of *Berry*, there is no disclosure in *Berry* that a user of the device is involved in the negotiation of the exchange rate. The disclosure in *Berry* that devices 100 and 101 may include “hard drive notebook computers, desktop computers, and workstations” (*Berry*, Column 5, lines 51-55) does not change the principles of operation disclosed in *Berry*. In fact, and as identified by Applicants above, *Berry* actually discloses that a state machine 401 initiates various messages during the negotiation of an exchange rate and the (re)establishment of a connection. (Abstract). The only messages disclosed in *Berry* as being involved in the negotiation of the exchange rate involve those generated by the state machine 401. Since the negotiation of an exchange rate and the establishment of a connection for a communication exchange typically occurs without any user interaction at all, it does not follow that Applicants’ steps of “receiving from a user of the first user endpoint a user-generated message to reestablish the communication session” and “in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint” necessarily flow from the teachings of *Berry*. As such, Applicants continue to respectfully contend that Applicants’ steps are not inherently disclosed by *Berry* or the proposed *Manzardo-Berry* combination.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 11, together with Claims 12-13 and 15 that depend from Claim 11.

B. The Proposed Combinations are Improper

In a previously submitted Response to Office Action submitted on July 17, 2007, Applicants argued that the Examiner had not provided the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicants’ invention to modify or combine *Manzardo* with *Ruberg* and/or *Berry*. Although Applicants believe that those previous arguments continue to have merit, to avoid burdening the record, Applicants do no repeat those arguments here.

Rather, Applicants refer the Examiner to pages 18-25 of the Response to Office Action submitted on July 17, 2007, for a detailed discussion of the impropriety of the proposed combinations of references. Applicants reserve the right to again argue these points and any related points before the Board of Patent Appeals should an Appeal become appropriate.

CONCLUSION

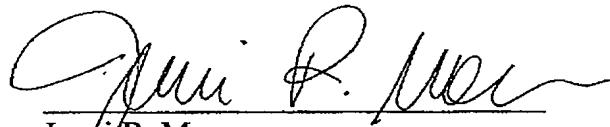
Applicants have made an earnest attempt to place this application in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorneys for Applicants, at the Examiner's convenience at (214) 953-6809.

Applicants believe that no fees are due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

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